

MEMORANDUM

TO: Interested Parties

FROM: Lee B. Hoffman, Chief
Certificate of Need Section

DATE: July 10, 2003

SUBJECT: Letters of Support Submitted for Certificate of Need Applications

The purpose of this memorandum is to clarify procedures relative to acceptance of letters of support for a project after the application has been filed to assure conformance with the Certificate of Need Law and administrative rules regarding the written comment period and amendments to the application.

From this date forward, **any letters of support or petitions for a project must be received by the CON Section no later than the last day of the written comment period for the application.** Any letters or petitions received after that date, including letters and petitions brought to the public hearing, will not be considered by the Agency in the review of the project. This procedure is consistent with NCGS 131E-185(1) states, *“Any person may file written comments and exhibits concerning a proposal under review with the Department, not later than 30 days after the date on which the application begins review.”* Additionally, NCGS 131E-185(2) states that at the public hearing *“oral arguments may be made regarding the application or applications under review...”* Therefore, the law provides for the public to make oral comments at the public hearing. There is no provision in the law allowing the submittal of written comments at the hearing given that it is held more than 30 days after the review begins. However, a speaker may provide the Agency a transcript of his/her oral remarks made at the hearing in accordance with NCGS 131E-185(2) which states *“any person may submit a written synopsis or verbatim statement that contains the oral presentation made at the hearing.”* In addition, an applicant may submit a written response or rebuttal to the written comments made on its application, to the Certificate of Need Section at the public hearing.

As has always been the case, please note that nothing contained in oral or written comments can be used to amend (i.e. revise, change or supplement) the application filed with the Certificate of Need Section. Specifically, 10A NCAC 14C .0204 states, *“An applicant may not amend an application. Responding to a request for additional information made by the Agency after the review has commenced is not an amendment.”* Therefore, the application cannot be amended with information contained in any letters or materials received during the written comment period or at the public hearing, even if the applicant states in the application that such letters will be submitted. Consequently, all information the applicant intends to rely on to demonstrate conformance of the application with the review criteria must be provided by the applicant in its application when first submitted to the Agency.

If you have any questions regarding this matter, please submit them in writing to Lee Hoffman, Certificate of Need Section, to assist the Agency in making consistent responses to all inquiries.